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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: - 18.02.2020

+ W.P.(C) 1494/2019, CM APPL. 30698/2019

SWAMI VISHWANATH JI

..... Petitioner

Through: Mr. Pardeep Gupta, Mr. Parigav Gupta, Ms. Mansi Gupta, Mr. Moazzam Ali and Ms. Mamta Sharma, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS..... Respondents

Through: Ms. Mrinalini Sen, Standing counsel with Ms.Niharika Jauhari, Adv. for DDA.
Mr. Yeeshu Jain with Ms. Jyoti Tyagi, Advs. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (Oral):

1. We have heard learned counsel for the parties and proceed to dispose of the writ petition.

2. The Petitioner has filed the present petition under Article 226 of the Constitution of India, seeking declaration to the effect that the acquisition proceedings with respect to land admeasuring 2 Bighas and 18 Biwas comprised in Khasra Nos.539 (5-12) & 540 (4-6), situated in the Revenue Estate of village Haidarpur, Tehsil Kanjawala, Delhi (hereinafter "the

subject land”) acquired vide Supplementary Award No. 13B/75-76 dated 18.09.1980, are deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter as “the 2013 Act”).

3. The prayers made in the present petition are as follows:

“(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to 2 Bighas and 18 Biwas of land of the Petitioner comprised in Khasra Nos.539 (5-12) & 540 (4-6), situated in the revenue estate of village Haidarpur, Tehsil Kanjawala, NCT of Delhi, NCT of Delhi having lapsed and further quashing the impugned notification No. F.15 (245)/60-LSG/L&B dated 24.10.1961 issued under section 4, Notification No. F.4 (5)/63 L& B dated 06.12.1966 issued under Section 6 of the Land Acquisition Act, 1894 and the AWARD NO.13B/75-76 with respect to 2 Bigha And 18 Biswas Of Land Comprised Out In The Khasra Number 539 (5-12), 540 (4-6) In The Village Haiderpur Delhi.

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 2 Bigha And 18 Biswas Of Land Comprised Out In The Khasra Number 539 (5- 12), 540 (4-6) In The Village Haiderpur Delhi.

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice.”

4. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA') was issued on 24.10.1961 and the declaration under

Section 6 of the LAA was issued on 06.12.1966. Subsequently, a Supplementary Award No. 13B/75-76 dated 18.09.1980 was passed in respect of the subject land.

5. Though the Petitioner is not the recorded owner, he claims ownership over the subject land by virtue of an oral Gift deed. It is averred that sometime in 1960, the Petitioner's forefather Late Jai Ram was gifted the subject land by the owner of the land- Late Shiv Prasad. Thereafter a temple was constructed on the subject land and since then the possession of the same was with the forefather of petitioner and after his demise, it is with the petitioner. Petitioner has based its challenge to the acquisition proceedings on the ground that despite the acquisition, the authorities have failed to take possession of the subject land and have also not paid any compensation in respect thereof.

6. Land Acquisition Collector (LAC) - Respondent No. 3, in its counter affidavit, has challenged the present writ petition on the ground of delay and laches highlighting that the subject land was acquired vide Award No. 13-B/75-76 dated 09.02.1979 and possession of the same was taken on 20.02.1979 and handed over to the DDA on the spot. It is also strongly stressed that the petitioner is not the recorded owner of the subject land and no gift deed or any other document has been placed on record to prove the ownership. LAC has further submitted that the recorded owner namely Shiv Prasad S/o Bhagwan Sahai was present at the time of passing of Award and has put his signature at the time of its pronouncement on 09.02.1979. It is submitted that the said recorded owner along-with one Ram Ji Dass Nagpal

filed claims under Section 9 and 10 of the LAA. Thus, upon taking the possession of the subject land, the LAC has duly paid the compensation to the claimant. Further it is also stated that the present petition is liable to be dismissed as the petitioner is habitual litigant. He had filed Civil Suit No. 174/96 for injunction which was dismissed and thereafter he filed WPC No. 369/2001 which also resulted in dismissal on 20.11.2002. The representation of the petitioner seeking denotification of the subject land was rejected on 06.05.2003 and the challenge thereto vide WPC No. 2916/2003 was dismissed as withdrawn. Subsequently, civil suit bearing CS.OS. No. 2098/2003 was dismissed on 13.12.2018 as not maintainable since the subject land was a subject matter of LAA.

7. Delhi Development Authority (DDA) - Respondent No. 1, in its counter affidavit, at the outset, has challenged the maintainability of the present petition on the ground of delay and laches. It has submitted that the subject land was acquired for the purpose of "Rohini Residential Scheme" and the present proceedings have become final. Petitioner is not the recorded owner of the subject land and does not have the *locus standi* to challenge the acquisition proceedings. He has not placed on record any document in support of the claim of ownership of his forefather who had been gifted the subject land by the recorded owner. It is also contended that the petitioner is a mere encroacher and usurper of the public land. The possession of the land has been taken and the compensation has already been paid to the majority of the recorded owners. The copy of the Possession proceedings dated 20.02.1979 has been annexed to the counter affidavit.

8. Petitioner, in its additional affidavit, has reiterated his stand as noted above and has relied upon the affidavits of the legal representatives of the recorded owner dated 16.12.2013. It has been stated in the affidavits that the subject land was gifted to the forefather of the petitioner. Petitioner also filed a common rejoinder to the counter affidavits filed by the DDA and LAC contending that the name of Village Haiderpur and Khasra Nos.539 and 540, do not appear in the Section 4 and 6 notifications.

9. Be that as it may, on a careful perusal of the petition, it emerges that no valid title documents have been annexed with the petition. Petitioner has relied upon “khatoni” records to claim his right over the subject land. The said record reflects the Khatedar of the subject land as “Shiv Prasad”. There is no reliable title document to prove Petitioner’s right over the subject land. In absence thereof, the Petitioner cannot claim right and title or interest over the subject land and does not have the *locus standi* to file the present petition.

10. Petitioner’s counsel was also queried about the delay in filing the present petition. No purposeful explanation has been tendered in the petition or during the course of arguments to justify the inordinate delay in coming forward to challenge the present acquisition proceedings. The notification under Section 4 of the LAA was issued on 24.10.1961, whereas the present petition has been filed after about six decades. The petition is obviously barred by laches.

11. The Supreme Court has dealt with the issue of delay and laches in

Mahavir v. Union of India, (2018) 3 SCC 588, in the context of the 2013 Act. The said judgment is unambiguous in emphasising that claims where there is total inaction are not meant to be revived by the 2013 Act. The relevant observations of the Supreme Court in the said decision read as under:

“22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly

observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years. ”

(emphasis supplied)

12. The aforesaid Judgment has been considered by the Supreme Court in the decision of *Indore Development Authority v. Shailendra* reported at (2018) 3 SCC 412, relevant portion of which is reproduced hereinunder: -

“128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of

section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section

24 (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.”

(emphasis supplied)

13. This Court has also dealt with the issue of delay and laches in the case of ***Mool Chand v. Union of India*** (W.P. (C) 4528/2015) dated 17th January 2019, wherein the Court while elaborating the decision of ***Mahavir v. Union of India***, (2018) 3 SCC 588 and ***Indore Development Authority v. Shailendra***, (2018) 3 SCC 412, on the aspect of delay and laches, made the following observations:

"34. The question then arises whether only the points of difference between the decisions in Pune Municipal Corporation (supra) and Indore Development Authority v. Shailendra (supra) and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in Indore Development Authority v. Shailendra (supra), it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., Pune Municipal Corporation (supra) and Indore Development Authority v. Shailendra (supra).

35. The other point of difference was that arising in Yogesh Neema v. State of MP (supra) where the correctness of the decision in Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra) as regards exclusion of the period

covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in Indore Development Authority v. Shailendra (supra) unanimously overruled the decision in Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra). On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in Indore Development Authority v. Shailendra (supra) i.e. "Whether section 24 of Act of 2013 revives barred and stale claims?" On this question there was no view (much less a contrary view) expressed in Pune Municipal Corporation (supra) or for that matter in any other subsequent decision of a smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to "all the aspects" being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in Indore Development Authority v. Shailendra (supra) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims."

(emphasis supplied)

14. Similar orders have been passed in several other cases, such as in the case of *Sushma Purthi v. Union of India* (W.P. (C) 586 of 2016) dated 31st January 2019, *Krishan v. Union of India* (W.P. (C) 4919 of 2014) dated 25th

January 2019, *Mohd. Mian v. Union of India* (W.P. (C) 2702/2019) dated 5th February 2019. The aforementioned cases have been dismissed by this court on the ground of delay and laches. Challenge against these judgments have been dismissed by the Supreme Court vide SLP (C) No. 11481/2019, SLP (C) No. 13423/2019 and SLP (C) No. 8848/2019, respectively.

15. Thus, in view of the foregoing discussion, the present petition is not maintainable on merits as well on the ground of delay and laches. Accordingly, the present petition alongwith the pending application is dismissed.

SANJEEV NARULA, J

VIPIN SANGHI, J

FEBRUARY 18, 2020

Pallavi